

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG

JOHN A. MARTINEZ,

Petitioner,

v.

Civ. Action No. 1:19-CV-28
(Kleeh)

PAUL ADAMS,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 17]

On February 28, 2019, the pro se Petitioner, John A. Martinez ("Petitioner"), filed a Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241. The Petitioner argues that the Bureau of Prisons violated his due process rights by sanctioning him for possession of drugs without sufficient evidence to support a conviction.

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. The Respondent filed a Motion to Dismiss or, in the Alternative, Motion for Summary Judgment [ECF No. 14]. The Petitioner did not respond to the Motion. On June 3, 2020, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court grant the Respondent's Motion and dismiss the Petition with prejudice.

The R&R also informed the parties that they had fourteen (14) days from the date of service of the R&R to file "specific written

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objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." It further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." The docket reflects that the Petitioner accepted service of the R&R on June 8, 2020. See ECF No. 18. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciro v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 17]. The Respondent's Motion to Dismiss or, in the Alternative, Motion for

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Summary Judgment [ECF No. 14] is **GRANTED**. The Petition [ECF No. 1] is **DISMISSED WITH PREJUDICE**. The Court further **ORDERS** that this matter be **STRICKEN** from the Court's active docket and **DIRECTS** the Clerk to enter judgment in favor of the Respondent.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via electronic means and to the pro se Petitioner via certified mail, return receipt requested.

DATED: June 26, 2020



THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE